SUPREME COURT, U. S.
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IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1972

STATE OF ILLINOIS, Movant-Plaintiff, vs. STATE OF MICHIGAN, Defendant.	No. 57 Original

On Motion for Leave to File Complaint
and Complaint

BRIEF FOR DEFENDANT IN OPPOSITION

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OPINION BELOW

The opinion of the Supreme Court of the State of Michigan (Exhibit "D" to Complaint) is reported at 386 Mich 474, 192 NW 2d 242 (1971).

JURISDICTION

Movant-plaintiff invokes jurisdiction under Article III, § 2, of the Constitution of the United States, and pursuant to 28 U.S.C. § 1251 (a) (1), as a purported suit between two sovereign states. Defendant State of Michigan disputes

this original jurisdiction claim and asserts that the only proper procedure would be to seek this Court's writ of certiorari to the Supreme Court of the State of Michigan under 28 U.S.C. § 1257, assuming arguendo that movant-plaintiff was able to establish that it was entitled to such writ of certiorari.

QUESTION PRESENTED

Whether the issuance of an opinion by the Michigan Supreme Court results in the State of Michigan becoming a party in interest entitling the State of Illinois to invoke the original jurisdiction of the Supreme Court of the United States.

STATUTE AND REGULATION INVOLVED

The movant-plaintiff contends that the Uniform Insurers Liquidation Act adopted by the States of Michigan and Illinois constitutes a treaty between said states which has been breached by the decision of the Michigan Supreme Court. Defendant maintains that the only statutory provisions involved are Sections 1, 2 and 3 of Part IV of the Michigan Workmen's Compensation Act [MCLA §§ 414.1 through 414.3; MSA §§ 17.195 through 17.197] cited by the Michigan Supreme Court in its opinion attached as Exhibit "D" to the complaint.

STATEMENT

This "original" action is the outgrowth of protracted litigation brought by two permanently disabled Michigan workmen to recover for injuries sustained in the course

of their employment from the reinsurers of an insolvent Illinois insurance company which insured their employer's risk. In all the proceedings below, the two Michigan employees, Jack Federoff and John H. Shannon, were plaintiffs. The defendants below were their employers, the Director of the Illinois Department of Insurance as liquidator of Highway Insurance Company, the Peerless Insurance Company and the Excess Insurance Company, Ltd., reinsurors of the defunct Highway Insurance Company. At no stage in any proceeding was any officer of the State of Michigan a party in interest.

Following the adverse decision in the Michigan Supreme Court, none of the defendants attempted to file a petition for a writ of certiorari pursuant to 28 U.S.C. § 1257. The opinion of the Michigan Supreme Court was issued December 21, 1971, which is more than ninety (90) days prior to the filing of the plaintiff's complaint in this cause, and the period for applying for a writ of certiorari has not been extended by a Justice of this Court [U.S.C. Title 28, § 2101 (c) and Rule 22 of this Court].

ARGUMENT

I.

The attempt by the Director of Insurance of the State of Illinois to invoke the original jurisdiction of this Court must fail because there is at most only one sovereign state involved in this litigation.

The liquidator of the Highway Insurance Company is by law the Director of Insurance of the State of Illinois. In marshaling the assets of a defunct insurance company, such liquidators are often required to institute actions in

foreign states. However, in this instance the action which culminated in this appeal from a decision of the Michigan Supreme Court was originally instituted in the Michigan courts by two injured Michigan workmen against the two reinsurors of their coverage. The Illinois Director of Insurance participated fully in these proceedings at each level.

Inasmuch as this defendant was never a party to any of the proceedings, it has had to rely upon the statement of facts set forth in the motion for leave to file amicus curiae brief of John H. Shannon. Curiously enough, plaintiff State of Illinois seeks to bring an original action against the State of Michigan, which has never been involved in the proceedings, while it has refused John H. Shannon consent to file a brief as amicus curiae. The involvement of the State of Michigan is illusory, as no direct benefits or losses will inure to the State of Michigan should the Supreme Court of the United States review the decision of the Michigan Supreme Court.

The State of Michigan is not being called upon to defend the actions of one of its officers for the purported violation of the Uniform Insurors Liquidation Act, but instead is asked to defend a unanimous opinion of the Supreme Court of the State of Michigan, which does not even mention the Uniform Insurors Liquidation Act. Original jurisdiction may not be maintained because neither the requisite state action nor state interest exist. *Louisiana* v *Texas*, 176 US 16, 20 S Ct 251, 44 L Ed 347 (1900).

II.

A decision in this case would have narrow application to future insurance liquidation proceedings. Both the states

of Michigan and Illinois, as well as most major insurance states, have adopted guaranty association acts which protect insureds and persons who claim through them in the event of the insolvency of an insurer. The Michigan Property and Casualty Guaranty Association Act was adopted in 1969 [MCLA 500.7901 et seq; MSA 24.17901 et seq] while the State of Illinois adopted its Insurance Guaranty Fund Act in 1971 [SHA Chapter 73, § 1065.72 et seq]. These guaranty statutes eliminate the possibility that the insurance claims against an insolvent insurer will go unpaid. The net effect of this development is that cases such as those brought by John H. Shannon and Jack Federoff will no longer be necessary.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the motion for leave to file a complaint should be denied.

Respectfully submitted,

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PROOF OF SERVICE

I, ROBERT A. DERENGOSKI, Solicitor General of the State of Michigan, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 22nd day of August, 1972, I served copies of the foregoing Brief for Defendant in Opposition on the Attorney General of the State of Illinois by depositing five (5) copies in a United States post office or mailbox, as certified mail, return receipt requested, with airmail postage prepaid and addressed to:

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